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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 19

Application Number: 09/619,357
Filing Date: July 19, 2000
Appellant(s): CASSONE, ALPHONSE

Harry Weiss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 December 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that

there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on 19 December 2003 has been entered.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 3-11, 13-21 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

US 3,585,991 Balamuth 6-1971

Nedwell, European Patent Application EP 0 891 761 A2, published 1-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-11 and 13-21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Balamuth in view of Nedwell.

Balamuth teaches a method of providing physical therapy to the patient comprising using sonic and ultrasonic transducers 45 below the upper surface of the water in the interior of a container 14. The frequencies used by the transducers begin at 500 cycles per second, column 5, lines 25-27, thereby comprehending the claimed range. Clearly taught is the method of providing physical therapy to the patient using sonic transducers submerged below the upper surface of the water in an interior of a container.

Nedwell additionally teaches the method of applying acoustic waves to the patient wherein the transducer is mounted in the wall of the container in figure 5 or is separate, self-contained and immersed in the container medium in figure 6. To any extent it is felt the transducers of Balamuth are not considered immersed in the interior of the container, Nedwell clearly teaches the advantages of having a separate self-contained transducer immersed within the container.

The claims require positioning the patient "a therapeutically beneficial distance from the container". A therapeutically beneficial distance from the container is something that would depend on unknown practical considerations of intended use. Patients with varying degrees of illness would require different types of treatment. Perhaps some patients would need zero distance from the container. Some patients may need direct contact with the container or body of water in order for the vibration waves to reach and effectively treat a deep or difficult area needing treatment. A patient directly contacting the water would have nothing between the body of water and the patient. The prior art would appear to comprehend the claim and the instance where zero distance is a therapeutically beneficial distance because a particular patient is in need of direct contact with the container and the immersed transducer.

When the patient is outside of the container they would be subjected to the sonic vibrations emanating from the container and thereby receiving the claimed method of treatment. Patients in the area around the container of Balamuth would necessarily be subjected to the sonic vibrations coming from the container and additionally receive treatment thereby comprehending the claims.

While the prior art may not teach spacing the patient with a space of air between the container and the patient it is felt that spacing the patient at different distances lacks an inventive step. Different patients have different types of conditions and different severities that would require different amounts of therapy. Spacing the patient even outside of the container doesn't appear to involve an inventive step. Clearly the method of treating patients for different types of ailments using a sonic transducer submerged inside of a container of water is old as taught by the prior art. Operational parameters such as the amount, degree, frequency, duration and spacing from the patient are all factors that are obvious practical considerations well within the level of ordinary skill in the art. Someone with severe trauma and pain would not be able to withstand intense vibration at close proximity to the source. The patient would need to be spaced a greater distance from the source than someone that would not be so sensitive to vibrations. Such considerations are well known. The overall concept of subjecting the patient to sonic waves that are submerged within a container of water is old as exemplified by the prior art. The only difference between that claimed and the prior art is the spacing from the transducer. As noted above such is an obvious practical consideration of intended use.

If it is felt the transducers of Balamuth are not immersed then it would have been obvious to one of ordinary skill in the art to modify Balamuth to provide the transducers

immersed in the interior of the tub as taught by Nedwell to provide a self-contained transducer for optimum spacing and effectiveness to the patient.

(11) Response to Argument

Appellant argues that the prior art does not teach positioning the patient "away from and outside the container". It is not clear how much weight can be given this argument since the claims do not require this language. What the claims do require is positioning the patient "a therapeutically beneficial distance from the container". A therapeutically beneficial distance from the container is something that would depend on unknown practical considerations of intended use. Patients with varying degrees of illness would require different types of treatment. Zero distance from the container may be needed for particularly deep or difficult areas needing therapy. A distance of zero would appear to comprehend the prior art because the patient is indirect contact with the container and the immersed transducer.

Having said that, spacing the patient from the source of vibration in order to vary the amount of treatment would not appear to be a leap of ingenuity that is outside the level of one of ordinary skill in the art. Prior art such as Alton 5,695,455 and Eakin 5,097,821 exemplify the convention of having an air space between the source of sonic vibration and the patient. Alton teaches a sonic transducer 143 spaced a distance l_z from the bladder on which the patient is lying. This spacing is well calculated for the specific intended use disclosed by Alton. Eakin also teaches spacing the sonic transducer 38a-d a distance 31 from the support on which the patient rests. Clearly providing a therapeutic distance between the patient and the sonic transducer is well known as exemplified by

Alton and Eakin. There appears to be no unobviousness to space the patient any desired distance from the sonic transducer even with an air space therebetween.

Alton additionally teaches that applying sonic vibration to the patient helps treat "every disease from cancer to the common cold". These aliments are adversely affected by heightened levels of stress and reducing stress thereby increases the body's ability to combat these diseases. Inflammatory musculoskeletal connective tissue disorder would be reduced by the application of sonic vibration therapy by reducing stress and tension in the muscles. With muscles and connective tissue under constant tension reduces the ability of the body to heal the trauma.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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ddd
February 8, 2004

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